

## § 30.12

### **§ 30.12 Q-12: What actions are necessary for a TARP recipient to comply with section 111(d) of EESA (the excessive or luxury expenditures policy requirement)?**

To comply with section 111(d) of EESA, by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the board of directors of the TARP recipient must adopt an excessive or luxury expenditures policy, provide this policy to Treasury and its primary regulatory agency, and post the text of this policy on its Internet Web site, if the TARP recipient maintains a company Web site. After adoption of the policy, the TARP recipient must maintain the policy during the remaining TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year including the sunset date (if the TARP recipient has never had an obligation). If, after adopting an excessive or luxury expenditures policy, the board of directors of the TARP recipient makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and its primary regulatory agency and post the amended policy on its Internet Web site, if the TARP recipient maintains a company Web site. This disclosure must continue through the TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year that includes the sunset date (if the TARP recipient has never had an obligation).

### **§ 30.13 Q-13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?**

As provided in section 111(e) of EESA, any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the TARP period must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the Federal securities laws (including the compensation discussion and analysis, the compensa-

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tion tables, and any related material). To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC that are applicable to the TARP recipient.

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### **§ 30.14 Q-14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?**

(a) *Special rules for acquisitions, mergers, or reorganizations.* In the event that a TARP recipient (target) is acquired by an entity that is not an affiliate of the target (acquirer) in an acquisition of any form, including a purchase of substantially all of the assets of the target, such that the acquirer after the transaction would have been treated as a TARP recipient if the target had received the TARP funds immediately after the transaction, acquirer will not become subject to section 111 of EESA merely as a result of the acquisition. If the acquirer is not subject to section 111 of EESA immediately after the transaction, then any employees of the acquirer immediately after the transaction (including target employees who were SEOs or most highly compensated employees immediately prior to the transaction and became acquirer employees as a result of the transaction) will not be subject to section 111 of EESA.

(b) *Anti-abuse rule.* Notwithstanding the provisions of paragraph (a) of this section, if the primary purpose of a transaction involving the acquisition, in any form, of a TARP recipient is to avoid or evade the application of any of the requirements of section 111 of EESA, the acquirer will be treated as a TARP recipient immediately upon such acquisition. In such a case, the SEOs and the most highly compensated employees to whom any of the requirements of section 111 of EESA and this Interim Final Rule apply shall be redetermined as of the date of the acquisition. The redetermined SEOs and most highly compensated employees of the post-acquisition acquirer shall consist of the PEO and PFO of the post-acquisition acquirer, plus the applicable

number of next most highly compensated employees determined by aggregating the post-acquisition employees of the acquirer (to include the pre-acquisition employees of the target employed by the acquirer, or anticipated to be employed by the acquirer), and ranking such employees in order of compensation for the immediately preceding fiscal year of the pre-acquisition target or pre-acquisition acquirer, as appropriate. In the case of an asset acquisition, the entity or entities to whom the target's assets are transferred shall be treated as the direct recipient of the financial assistance for purposes of determining which other related entities are treated, in the aggregate, as the TARP recipient under the definition of "TARP recipient" in § 30.1 (Q-1).

**§ 30.15 Q-15: What actions are necessary for a TARP recipient to comply with certification requirements of section 111(b)(4) of EESA?**

(a) *Certification Requirements*—(1) *General*. To comply with section 111(b)(4) of EESA, the PEO and the PFO of the TARP recipient must provide the following certifications with respect to the compliance of the TARP recipient with section 111 of EESA as implemented under this part:

(2) *First Fiscal Year Certification*. (i) Within ninety days of the completion of the first annual fiscal year of the TARP recipient any portion of which is a TARP period, the PEO and the PFO of the TARP recipient must provide certifications similar to the model provided in appendix A to this section.

(ii) If the first annual fiscal year of a TARP recipient any portion of which is a TARP period ends within thirty days after the closing date of the applicable agreement between the TARP recipient and Treasury, the TARP recipient shall have an additional sixty days beginning on the day after the end of the fiscal year during which it can establish the compensation committee, if not already established, and during which the compensation committee shall meet with senior risk officers to discuss, review, and evaluate the SEO compensation plans and employee compensation plans in accordance with § 30.4 (Q-4) of this part. The certifi-

cations of the PEO and the PFO of the TARP recipient must be amended to reflect the timing of the establishment and reviews of the compensation committee.

(3) *Years Following First Fiscal Year Certification*. Within ninety days of the completion of each TARP fiscal year of the TARP recipient after the first TARP fiscal year, the PEO and the PFO of the TARP recipient must provide a certification similar to the model provided in Appendix B to this section.

(4) *Location*. A TARP recipient with securities registered with the SEC pursuant to the Federal securities law must provide these certifications as an exhibit (pursuant to Item 601(b)(99)(i) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(99)(i)) to the TARP recipient's annual report on Form 10-K and to Treasury. To the extent that the PEO or the PFO of the TARP recipient is unable to provide any of these certifications in a timely manner, the PEO or the PFO must provide Treasury an explanation of the reason such certification has not been provided. These certifications are in addition to the compensation committee certifications required by § 30.5 (Q-5) of this part.

(5) *Application to private TARP recipients*. The rules provided in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws, except that the certifications under Appendix A, paragraph (x) and Appendix B, paragraph (x) of this section are not required for such TARP recipients. A private TARP recipient must provide these certifications to its primary regulatory agency and to Treasury.

(6) *Application to TARP recipients that have never had an obligation*. For those TARP recipients that have never had an obligation, the PEO and PFO must provide the certifications pursuant to this paragraph (a) only with respect to the requirements applicable to a TARP recipient that has never had an obligation (generally certain compensation committee reviews of employee compensation plans and the issuance of, and compliance with, an excessive or luxury expenses policy).